

UNCLASSIFIED

Approved For Release 2004/04/19 : CIA-RDP83M00171R002300040006-3

8 August 1977

ATINTL

MEMORANDUM FOR:

Security Committee

SUBJECT:

Comments on 2 August 1977 Draft of EO on
National Security Information and Material

Page 2, Section 1 (d). In the second line change its identity is to its identity or technological capabilities are.

In the third line delete the last word significantly. This is an undue constraint on the need to protect intelligence sources and methods, the long term effectiveness and productivity of which is often difficult to assess.

Page 3, Section 1 (e). In the third line delete the word significantly for the reason given above.

Page 3, Section 1 (f) (3). In the third line delete the word significant. The inclusion of this word represents a noteworthy and undesirable modification to the present guideline for the Confidential classification. Literal adherence to this stipulation would for all practical purposes serve to elevate CONFIDENTIAL to the same level as the SECRET classification because dictionary definitions for serious (which is the constraining adjective for the damage to the national security for the SECRET classification) and for significant both equate to important. Therefore, logically there would be no rationale for the retention of the significant criterion in the CONFIDENTIAL classification--or of the CONFIDENTIAL classification per se. Since that was not the purpose of the drafters, and since there is a clear need for a classification level below SECRET in the Intelligence Community, recommend the deletion of the word significant.

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Page 3, Section 2 (a) (2). In the second line delete the words at least significant. This deletion is required as a sequel to the action indicated in the previous paragraph, and from the general Constitutionally-imposed obligation and responsibility of the President and Executive Department officials to provide for the common defense (or in contemporary language, the national security) to the best of their abilities. Since this concept is unequivocal and unqualified, the qualification at least significant is clearly inappropriate--for it would clearly indicate that some damage to the national security would be acceptable.

Page 3, Section 2 (b). The suggested revision of this subparagraph on Classification Criteria, which was forwarded after the 2 August draft of the EO, is a decided improvement.

Page 6, Section 2 (d) (1). In view of the budgetary and administrative separation of the Intelligence Community Staff from the Centra; Intelligence Agency, recommend adding the Intelligence Community Staff to the list of agencies authorized to originally classify at the TOP SECRET level.

Page 15, paragraph 6 (c). This paragraph on Special Access needs to be completely revised with respect to intelligence matters. As currently drafted, it constitutes an undue and illegal constraint on the DCI's statutory responsibility for protecting intelligence sources and methods. The drafters also seem to be oblivious of the fact that in some instances special access programs on intelligence matters have been imposed upon the specific direction of the President.

To correct this problem, recommend the following changes:

1. Delete the parts of the text that are indicated on the attached page 15.
2. Insert the following new subparagraph (4).

(4) In accordance with the provisions of the National Security Act of 1947, as amended, and the Central Intelligence Act of 1949, as amended, the Director of Central Intelligence is responsible for the creation, control, and review of special access programs with respect to the protection of intelligence sources and methods.

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Page 19, Section 10. Insert the following as a new Section 10 and then re-number the present Sections 10 and 11.

Section 10. Intelligence Sources and Methods. Nothing in this Order shall supersede the responsibility levied by the National Security Act of 1947, as amended, and by the Central Intelligence Act of 1949, as amended, on the Director of Central Intelligence for protecting intelligence sources and methods from unauthorized disclosure.



STATINTL

Executive Secretary

Committee on Imagery Requirements and Exploitation

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(c) Special Access.

(1) The head of an agency specifically named in Section 2(d)(1), ~~or the Director of Central Intelligence,~~ may impose, in conformity with the provisions of this Order, special requirements with respect to access, distribution, and protection of classified information, ~~including those which presently relate to intelligence sources and methods, or cryptology.~~ Special access programs may only be created or continued by the head of an agency specifically named in Section 2(d)(1), ~~or, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence,~~ personally and in writing. Such special access programs shall be created or continued only on the specific showing that:

(i) Normal safeguarding procedures are not sufficient to limit need-to-know or access.

(ii) The number of persons given access will be kept reasonable and limited to the absolute minimum.

(iii) The special access controls balance the need to protect the information against the full spectrum of needs to use the information.

(2) Further, all such special access programs shall automatically terminate after three years unless renewed in accordance with the procedures in this Section.

(3) Heads of agencies, ~~or the Director of Central Intelligence, as applicable,~~ shall establish and maintain for their areas of responsibility central listings of all special access programs continued or created by them.

*Insert
New
(4)* (d) Historical Researchers and Former Officials. The requirement in Section 6(a)(1) that access to classified information be granted only as is necessary for the performance of one's duties shall not apply to persons outside the Executive Branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President; provided, however, that in each case the head of the agency:

(1) Determines in writing that access is consistent with the interests of national security;

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NOTES: